Research Proposal of the Thesis titled

REGULATORY FRAMEWORK FOR SEAFARERS' RIGHTS IN INDIA – ANALYSING RECRUITING AGENCIES AND SOCIAL SECURITY MEASURES UNDER THE MARITIME LABOUR CONVENTION, 2006

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INTRODUCTION

Seafarers are a crucial part of the global trade and thereby also the global economy. They are essential and inevitable in the transportation of goods across the globe using international waters. The contribution of seafarers in global trade is highly significant yet they face adversities of various types including but not limited to adverse working conditions, exploitative practices for recruitment and dearth of social security measures. The International Labour Organisation (ILO) has adopted the Maritime Labour Convention, 2006 (MLC, 2006), the said convention aims at providing wide range of rights and protections for seafarers across the globe. Given the long coastline is a nation of maritime importance and therefore, India has also ratified MLC, 2006. The said convention has thereby provided various rights and regulations for the seafaring workforce. Though MLC, 2006, has been adopted, there are various deficiencies in the implementation of its regulations, particularly concerning the oversight of recruiting agencies and the provision of sufficient social security measures.

The present study shall analyse the existing framework of the recruitment and social security of seafarers in India, highlighting the shortcomings of the regulatory processes and as far as possible provide strategies for better implementation. By studying the functioning of the recruitment agencies and how the social security measures laid down by MLC, 2006, this research aims to enhance the conservation of maritime labour rights and also guide policy alterations that can have the potential to enhance the protection of Indian seafarers.

When any seafarer is recruited the agency and the process by which the recruitment happens form a vital part of a seafarer's journey to employment, it also influences their access to fair compensation, how stable the job is going to be, and the safety of working environments. The recruitment of seafarers in India is managed by private agencies that are licensed and are required to comply with the regulations and provisions of the Merchant Shipping Act, 1958 and its later amendments in accordance with the MLC, 2006. Despite the existing legal framework, unlawful and unethical practices such as fraudulent job offers, exorbitant placement fees, and false promises of recruitment continue to plague the Indian scenario.

The absence of rigorous implementation and monitoring systems breeds fraudulent activities in the seafarer recruiting industry. These situations can be tackled by improvement of transparency in the hiring and recruitment process and strict compliance with the rules provided to the licensed agencies. The repercussions of failure to comply with the provisions are not stringent enough and lack the authority to prevent unlawful activities. Therefore, enhancing the same becomes a significant issue. Moreover, better grievance redressal mechanisms and widespread awareness about the rights of seafarers can also be a major aid in correcting the current situation.

Seafaring being a challenging and risky job demands that the financial stability and support for seafarers and their families is ensured. The MLC, 2006, provides social security as a basic right for seafarers. The said convention also requires member countries to build systems that ensure recruitment plans, various disability benefits, safety measures for unemployment, health care and retirement plans and benefits. In India, the Empoyees' State Insurance (ESI) Scheme, the Seafarers' Welfare Fund Society (SWFS), and other specific schemes form the social security measures for seafarers and are regulated as per the said schemes. However, despite existing provisions, seafarers encounter considerable hindrances in obtaining social security benefits owing to factors like complex bureaucracy, a dearth of welfare programmes, and absence of awareness. The seafarers who are hired on short-term contracts or by foreign shipping firms are more prone to financial uncertainty as they are unable to avail national welfare programs once their contract is over. The deficiencies in the provisions for the regulation of recruiting agencies and social security systems have given rise to a need for positive change and enhancement of regulations which can ensure better positioning of seafarers in India. The present study aims to examine these crucial aspects and find the legal gaps. Moreover, it shall also as far as possible, provide specific policy suggestions. The study as a by-product shall also address the wider discussion regarding maritime labour rights and shall promote the reforms that bring dignity and stability to the profession of seafaring in India.

STATEMENT OF RESEARCH PROBLEM

India's ratification of the Maritime Labour Convention, 2006, has not completely resolved the issues faced by Indian seafarers like exploitative recruitment and hiring process, non-transparency, and insufficient social security measures. The fraud recruitment agencies impose exorbitant charges and intentionally misrepresent lucrative work opportunities which end up leaving seafarers abused and vulnerable. The frail implementation of regulations also becomes a cause of numerous seafarers' not being able to access decent healthcare, retirement benefits and disability compensation. The present study investigates the regulatory deficiencies in regulation mechanisms for recruitment agencies and social security measures, suggesting reforms in the interest of Indian seafarers.

RESEARCH OBJECTIVES

RO1: To assess the functioning and enforcement of the Maritime Labour Convention, 2006 mainly focusing on regulation mechanisms for recruitment agencies in India and social security measures for seafarers.

RO2: To draw a comparison between the Indian regulatory framework for the recruitment of seafarers with the provisions of the Maritime Labour Convention, 2006.

RO3: To conduct a critical examination of the enforceability of seafarers' rights in the Indian legal regime. To study and understand the functioning of Indian seafarer recruitment agencies and evaluate their compliance to national and international standards and their deficiencies in promoting ethical recruitment practices.

RO4: To study the regulatory framework concerning recruitment practices and social security measures of seafarers in India and identify loopholes therein.

RO5: To evaluate the sufficiency of social security measures for seafarers in India, which encompass health care, pensions, and compensation for injuries or fatalities, and to analyse how these provisions align with the international benchmarks established by the MLC, 2006.

RO6: To suggest measures that would strengthen the enforcement of seafarers' rights concerning recruitment and social security.

RESEARCH QUESTIONS

RQ1: What are the roles and responsibilities of the recruiting agencies in ensuring seafarers' rights

RQ2: What primary obstacles do Indian seafarers encounter during the recruitment process, and in what ways do unregulated recruitment agencies play a role in labour exploitation?

RQ3: To what degree has India's regulatory system overseeing recruitment agencies adhered to the criteria established by the Maritime Labour Convention, 2006 (MLC, 2006)?

RQ4: What are the legal and institutional shortcomings in India's enforcement frameworks aimed at curbing fraudulent recruitment practices in the maritime industry?

RQ5: How well do India's social security programs function in providing financial and welfare support for seafarers, and what enhancements are required?

RQ6: What is the comparison between India's social security system for seafarers and the international best practices found in other leading maritime countries?

RQ7: What regulatory changes are necessary to enhance the oversight of recruitment agencies and broaden social security safeguards for Indian seafarers in accordance with international legal norms?

HYPOTHESIS

The inadequacies in the Indian Regulatory framework governing recruiting agencies, combined with insufficient social security measures, significantly increase the risks/vulnerabilities faced by Indian seafarers.

RESEARCH METHODOLOGY

The present research work requires a doctrinal type of study of the topic. The doctrinal research will deal with the literature relating to the Human rights of seafarers and the Maritime Labour Convention with reference to India. To meet the requirements of the research work and as per the "nature of the study, the library method of research to scan the available literature in the forms of books, reported case laws, reports of the committees and commissions of the government and international documents such as conventions/recommendations/guidelines related to violation and protection of human rights at the sea will be studied by the researcher. Apart from this, for the collection of data, the researcher will visit libraries of Gujarat National Law University, Gandhinagar, Gujarat Maritime University, and Karnavati University and adhere to make the research more authentic and meaningful.

LITERATURE REVIEW

1. **Jennifer Lavelle (2013) *"The Maritime Labour Convention 2006: International Labour Law Redefined"***[1]:

   With the Maritime Labour Convention now in force (as of August 2013), the shipping industry is faced with a new international convention that has comprehensive implications across all sectors. This vital text provides timely analysis and thought-provoking essays regarding the Convention's application and enforcement in practice. Hailed as the "Seafarer's Bill of Rights" and the "fourth pillar" of the international regulatory regime for quality shipping, the Maritime Labour Convention is set to significantly alter the playing field for key stakeholders. This book offers diverse and interesting commentary in respect of the Convention's impact on core sectors of the shipping industry, identifying both strengths and weaknesses of the Convention, as well as potential hurdles that will need to be overcome. Each chapter focuses on a different aspect of the Convention, ranging from the individual rights of the seafarer to challenges of flag State implementation. Special attention is given to enforcement through examination of the innovative measures provided in the Convention itself, along with a discussion of domestic enforcement mechanisms in certain States. Furthermore, the book evaluates whether the Convention has filled existing gaps in maritime labour law, resolved prior difficulties or created new problems. This book expertly addresses issues of fundamental importance to national authorities, shipping professionals and associations, maritime lawyers and academics worldwide.

[1] The Maritime Labour Convention 2006: International Labour Law Redefined. (2013). United Kingdom: Taylor & Francis.

2. **Doumbia-Henry, C., Devlin, D., McConnell, M. (2011).** "***The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime"***[2] :

   The Maritime Labour Convention, 2006 (MLC, 2006), adopted by the International Labour Organization (ILO) in 2006, is the fourth pillar of the international maritime regulatory regime. It both fills a gap in the 1982 United Nations Convention on the Law of the Sea and complements the International Maritime Organization's (IMO) core conventions on ship safety, & security, training and pollution prevention. Aimed at achieving both "decent work" for seafarers and fair competition for shipowners, the MLC, 2006 covers most aspects of maritime labour. It establishes an effective enforcement and compliance system with, for the first time, certification of seafarers' working and living conditions on ships. With its interwoven labour and social rights and economic goals, the MLC, 2006 is an international legal instrument that will have a significant impact on approaches to labour standards in other globalized sectors. Co-authored by international law practitioners and scholars with combined expertise in the public international law of the sea, maritime law, international labour law, and, more specifically, direct involvement with the development of the MLC, 2006 over nearly a decade, The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime discusses the MLC, 2006 within the contexts of labour and maritime law. It also includes an appendix with the full Convention text (and notes).

3. **Devprakash, Charvi,** ***International Labour Standards & India Vis-à-Vis Industrial Relations***[3] :

   This paper in particular aims to list down the international labour standards that are established by the ILO primarily the 10 core conventions and India's take on them. The paper begins by analysing the role of ILO, India, and its unique position pre-and-post-independence, eventually moving into India's global standing in the International Labour Organisation. It further dives into analysing the 10 core conventions of ILO and investigating those ratified and not ratified by India. Reasons for such non-ratification upon being highlighted, in turn, extend the scope of the study allowing the author to analyse the deviations and differences between India's labour legislations and ILO conventions.

4. The famous book of **O. P. Sharma (2009)**[4] titled **"*The International Law of the Sea India and UN Convention of 1982*"** discus that the law of the sea has undergone more change in the last

[2] Doumbia-Henry, C., Devlin, D., McConnell, M. (2011). The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime. Netherlands: Brill.
[3] Devprakash, Charvi, International Labour Standards & India Vis-à-Vis Industrial Relations (January 2, 2023). Available at SSRN: https://ssrn.com/abstract=4316311 or http://dx.doi.org/10.2139/ssrn.4316311
[4] O. P. Sharma, "*The International Law of the Sea India and UN Convention of 1982*", Oxford University Press, 2009.

sixty years than in the previous four hundred. The United Nations Convention on the Law of the Sea, 1982 has introduced revolutionary changes and its provisions govern almost all the diverse uses of the oceans. Today all naval operations, in times of peace as well as war, are to be carried out within the framework of the Convention. It also has far-reaching significance for maritime trade, both domestic and international. This lucid and comprehensive book examines all key aspects of the international law of the sea, bearing in mind India s concerns in particular. The author contends that the Conventions regime on navigation through the territorial sea, international straits, the exclusive economic zone, abatement and control of marine pollution, marine scientific research, and the international seabed area are fully in accord with the country s national interests. He explains the jurisdictional boundaries or functional divisions of the oceans into various maritime zones along with their military implications. He analyses concepts like ocean governance, the limitations on the freedom of the seas and the signal importance of maritime cooperation in various spheres of the law of the sea. He argues that the strategic challenge for the international community is to evolve a paradigm shift from competitive to cooperative security so that emerging threats like transnational crimes and terrorism may be dealt with. This book also provides an overview of controversies and points of disagreement between various states. It discusses briefly some disputes that came before the International Court of Justice, the Law of the Sea Tribunal, and national courts, as well as their judgments. It clarifies what the legitimate use of ocean space in today s world is and what is not.

5. ***Natalie Klein (2022)***[5] "*Geneva Declaration on Human Rights at Sea: An Endeavour to Connect Law of the Sea and International Human Rights Law*":

   As of March 1, 2022, the Geneva Declaration on Human Rights at Sea is in effect. Human Rights at Sea, a non-governmental organisation, drafted this paper in response to the pressing need to address human rights abuses on the high seas and ensure victims get justice. Responding to this problem has been complicated by the need to link the international human rights system with the law of the sea. The article delves into the Geneva Declaration's contents and how they compare to the current state of maritime law. The significance of this informal tool for international law-making must be considered apart from the jurisdictional difficulties offered.

[5] Klein, Natalie. (2022). *Geneva Declaration on Human Rights at Sea: An Endeavour to Connect Law of the Sea and International Human Rights Law.* 53(2)-(3) Ocean Development and International Law, UNSW Law Research Paper No. 22-21.

TENTATIVE CHAPTERISATION PLAN

Chapter 1: Introduction

1.1 Background and Context

1.2 Research Problem and Objectives

1.3 Scope and Significance of the Study

1.4 Literature Review

1.5 Methodology

Chapter 2: Regulatory Framework for Recruiting Agencies in India

2.1 Overview of Regulatory Framework Governing Recruiting Agencies in India

2.2 Comparison of International Standards with Indian Regulations

2.3 Analysis of Strengths and Weaknesses in the Current Framework

2.4 Examination of the Role and Responsibilities of the Recruiting Agencies in Ensuring Seafarers' Rights

Chapter 3: Social Security Measures for Seafarers

3.1 Review of Social Security Measures Implemented for Seafarers in India

3.2 Comparative Analysis of International Standards on the Social Security of Seafarers

3.3 Assessment of the Effectiveness and Adequacy of Existing Social Security Measures in India

3.4 Identification of Barriers and Challenges in the Implementation of Social Security Provisions in India

Chapter 4: Policy Recommendations

4.1 Proposal of Reform and Policy Measures to Reform Seafarers' Human Rights

4.2 Specific Recommendations for Improving the Regulatory Framework for Recruiting Agencies

4.3 Potential Strategies for Effective Implementation and Enforcement of the Recommendations

Chapter 5: Conclusion

5.1 Summary of Key Findings

5.2 Contribution to Existing Knowledge

5.3 Limitation of Study

5.4 Direction of Future Research

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